

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHNNY SURBER, #21030442,

Plaintiff,

V.

DALLAS COUNTY DISTRICT
COURT and DIRECTOR, TDCJ-
CID,

Defendants.

Civil Action No. 3:21-CV-03203-X-BH

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE AND DENYING CERTIFICATE
OF APPEALABILITY**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. [Doc. No. 21]. No objections were filed. The District Court reviewed the proposed findings, conclusions, and recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

For the reasons stated in the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, the *Amended Petition for a Writ of Habeas Corpus by a Person in State Custody*, received on February 10, 2022 [Doc. No. 13], is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state court remedies.

In accordance with Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253(c) and after considering the record in this case and the recommendation of the Magistrate Judge, the petitioner is **DENIED** a Certificate of Appealability. The

Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling."¹

In the event that the petitioner files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* that is accompanied by a properly signed certificate of inmate trust account.

IT IS SO ORDERED this 29th day of April, 2022.



BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

¹ *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, as amended effective on December 1, 2019, reads as follows:

- (a) Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.
- (b) Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.